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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

12 MARIA RODAS, individually and on
13 behalf of other persons similarly
situated.

14 Plaintiff.

15 v.

16 Flying Food Group LLC, and DOES 1 through 10.

Defendant.

CASE No.

DEFENDANT FLYING FOOD GROUP, LLC'S NOTICE OF REMOVAL

Los Angeles Superior Court,
Case No: 18STCV06795

Action Filed: November 30, 2018
Trial Date: None

1 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446,
2 Defendant Flying Food Group, LLC (“Defendant” or “FFG”), by and through its
3 counsel, remove to this Court the action entitled *Maria Rodas v. Flying Food Group,*
4 *LLC*, (“Action”), Case No. 18STCV06795, which was originally filed in the Superior
5 Court of the State of California for the County of Los Angeles.

6

7 **I. INTRODUCTION**

8 Removal is proper because this putative class action meets the jurisdictional
9 requirements under the Class Action Fairness Act of 2005 (“CAFA”). The Action
10 involves an amount in controversy exceeding \$5,000,000, asserts a putative class
11 consisting of more than 100 members, and is between citizens of different states.

12

13 Defendant’s filing of this Notice of Removal is in no way a concession or an
14 assessment of its liability in this Action. *Lewis v. Verizon Commc’ns, Inc.*, 627 F. 3d
15 395, 400 (9th Cir. 2010). Defendant disputes its liability as to all claims in any amount
16 raised by Plaintiff Maria Rodas (“Plaintiff”) and/or any putative class member.
17 Defendant further disputes that Plaintiff and/or any member of the putative class
18 suffered any injury or incurred damages as a result of Defendant’s acts. Defendant
19 further disputes that Plaintiff, any putative class member, or their attorneys are entitled
20 to any relief, including but not limited to compensatory or consequential damages, civil
21 penalties, punitive damages, attorney’s fees, prejudgment interest, or injunctive relief.
22 Defendant hereby reserves the right to contest the legal sufficiency of the claims raised
23 in this Action, and the right to raise any other defense.

24

25 **II. THE FILING OF THIS NOTICE OF REMOVAL IS TIMELY**

26 On November 30, 2018, Plaintiff Maria Rodas filed a Complaint on behalf of a
27 putative class alleging wage and hour violations in the Superior Court of the State of
28 California in the County of Los Angeles as *Maria Rodas v. Flying Food Group, LLC*,

1 Case No. 18STCV06795. (Declaration of John A. Conkle In Support of Defendant
2 Flying Food Group, LLC's Notice of Removal ("Conkle Decl.") at ¶ 2.) Defendant was
3 served with the Summons and Complaint on December 20, 2018. (*Id.* at ¶ 2.)

4

5 Under 28 U.S.C. § 1446(b)(1), Defendant must remove the Action within thirty
6 days of service, or on or before January 21, 2019. The filing of this Notice of Removal
7 is therefore timely. Under 28 U.S.C. § 1446(a), Defendant need only provide a "short
8 and plain statement of the grounds for removal, together with a copy of all process,
9 pleadings, and orders served upon such defendant or defendants in such action." In
10 compliance with 28 U.S.C. § 1446(a), Defendant attaches a copy of all process,
11 pleadings, and orders served upon it as **Exhibit A**, and sets forth the grounds for
12 removal below. (*Id.*) While Defendant was not served with additional documents that
13 have been filed in the Superior Court of the State of California in the County of Los
14 Angeles, Defendant attaches copies of these documents as **Exhibit B** and **Exhibit C**.
15 (*Id.* at ¶¶ 3-4.)

16

17 Following the filing of this Notice of Removal, Defendant will also promptly
18 serve a copy of this Notice of Removal to Plaintiff's counsel and file a copy of the
19 Notice with the Clerk of the Superior Court of the State of California for the County of
20 Los Angeles. 28 U.S.C. § 1446(d). (*Id.* at ¶ 5.)

21

22 **III. CLASS ACTION ALLEGATIONS**

23 Plaintiff brings this action on behalf of herself and a putative class of similarly
24 situated employees, and breaks down the putative class into six subclasses as follows:
25

26

27 Rounding Class: All persons who, at any time since January 1, 2017,
28 worked for Defendant as an hourly employee in the state of California.

1 **Overtime Class:** All persons who, at any time since January 1, 2017,
2 worked for Defendant as an hourly employee in the state of California,
3 whose terms and conditions of employment were not governed by a
4 collective bargaining agreement, and who worked overtime hours.

5 **Shift Pay Class:** All persons who, at any time since January 1, 2017,
6 worked for Defendant as an hourly employee in the state of California,
7 whose terms and conditions of employment were not governed by a
8 collective bargaining agreement, and who received shift pay for any pay
9 period during which they worked overtime hours.

10 **Wage Statement Class:** All persons who, at any time since the date one
11 year before the filing of the complaint, worked for Defendant as an hourly
12 employee in the state of California.

13 **Shift Pay Wage Statement Class:** All persons who, at any time since the
14 date one year before the filing of the complaint, worked for Defendant as
15 an hourly employee in the state of California and received shift pay.

16 **Terminated Employees Class:** All persons who worked for Defendant as
17 an hourly employee in the state of California whose employment with
18 Defendant ended at any time since January 1, 2017.

19 (Ex. A, Complaint at ¶ 12.) The Complaint alleges that Defendant engaged in a
20 rounding policy that resulted in underpayment of wages to the putative class, that
21 Defendant pays members of the putative class “shift pay” for working night shifts but
22 does not take into account that shift pay when calculating overtime compensation, that
23 paychecks are not timely issued following the close of the pay periods, and that putative
24 class members terminated from employment do not receive all wages owed at
25 termination. (Ex. A, Complaint at ¶¶ 1, 6, 7.) The Complaint brings six causes of
26 action for: 1) failure to pay minimum wages (to the Rounding Class); 2) failure to pay
27 overtime wages (to the Overtime Class); 3) failure to pay overtime wages (to the Shift
28 Pay Class); 4) failure to provide accurate wage statements (to the Wage Statement
29 Class); 5) (failure to provide complete wage statements (to the Shift Pay Wage
30 Statement Class); and 6) failure to pay all wages owed upon termination (to the
31 Terminated Employees Class). (Ex. A, Complaint at ¶¶ 15-56.)

1 Plaintiff seeks relief in the form of orders certifying this case as a class action,
2 appointing Plaintiff as representative and appointing Plaintiff's counsel as counsel for
3 the class, awards of unpaid wages, liquidated damages, and unpaid overtime wages,
4 civil penalties, statutory penalties, prejudgment interest, and reasonable attorneys' fees
5 and costs. (Ex. A, Complaint, Prayer for Relief.)

6

7 **IV. THIS CLASS ACTION SATISFIES THE JURISDICTIONAL
PREREQUISITES FOR REMOVAL UNDER CAFA**

8 Defendant may remove this Action under 28 U.S.C. § 1446(a) by providing a
9 "short and plain statement of the grounds for removal...." Defendant's removal
10 allegations should be construed liberally. *Dart Cherokee Basin Operating Co., LLC v.*
11 *Owens*, 135 S. Ct. 547, 554 (2014).

12

13

14 Under CAFA, a district court has original jurisdiction over a civil action "in
15 which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
16 interest and costs, and is a class action in which...any member of a class of plaintiffs is
17 a citizen of a State different from any defendant[,"] and is a class action with at least
18 100 putative class members. 28 U.S.C. §§ 1332(d)(2), (5)(B). This Action meets each
19 of these prerequisites.

20

21

22 **A. THERE ARE OVER 100 MEMBERS IN THE PUTATIVE CLASS**

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29 A class action may be removed under CAFA if "the number of members of all
30 proposed plaintiff classes in the aggregate is less than 100." 28 U.S.C. § 1332(d)(5)(B).
31 Plaintiff alleges that:

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39 there are not less than 50 members in the Rounding Class, not less than 50
40 members in the Overtime Class, not less than 50 members in the Shift Pay
41 Class, not less than 50 members in the Wage Statement Class, not less
42 than 50 members in the Shift Pay Wage Statement Class, not less than 50
43 members in the Terminated Employees Class, and not less than 50
44 members in the Class.

1 (Ex. A, Complaint at ¶ 13(a).) The Rounding Class alone, defined as “persons who, at
 2 any time since January 1, 2017, worked for Defendant as an hourly employee in the
 3 state of California[,]” consists of more than 100 putative class members. (Ex. A,
 4 Complaint at ¶ 12.) For example, Defendant employs workers at multiple facilities in
 5 California, one of which is a facility located at 3305 Bandini Blvd. in Vernon,
 6 California (the “LAV Facility.”) (Declaration of Laura Bland in Support of Defendant
 7 Flying Food Group, LLC’s Notice of Removal (“Bland Decl.”) at ¶ 7.) As of January
 8 17, 2019, Defendant employs 415 hourly nonexempt employees at the LAV Facility.
 9 (*Id.*)

10

11 Because the putative class consists of more than 100 members, this Action meets
 12 the jurisdictional prerequisite under 28 U.S.C. § 1332(d)(5)(B).

13

14 **B. THE AMOUNT IN CONTROVERSY EXCEEDS \$5,000,000**

15 When a class action is removed under CAFA, the district court can exercise
 16 original jurisdiction over the action when “the matter in controversy exceeds the sum or
 17 value of \$5,000,000, exclusive of interest and costs[.]” 28 U.S.C. § 1332(d)(2).

18

19 Although Defendant disputes any liability as to Plaintiff’s claims, and disputes
 20 that Plaintiff and/or the putative class suffered any injury or incurred damages, the
 21 amount in controversy raised by the claims asserted in the class action Complaint, in
 22 the aggregate, exceed \$5,000,000, exclusive of interest and costs. *See Lewis v. Verizon*
 23 *Commc’ns, Inc.*, 627 F. 3d 395, 400 (9th Cir. 2010) (“The amount in controversy is
 24 simply an estimate of the total amount in dispute, not a prospective assessment of
 25 defendant’s liability.”)

26

27 To meet this jurisdictional requirement, under 28 U.S.C. § 1446(a), “a
 28 defendant’s notice of removal need include only a plausible allegation that the amount

1 in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating*
 2 *Co., LLC*, 135 S. Ct. at 554 (“By borrowing Rule 8(a)’s ‘short and plain statement’
 3 standard, corroborative history indicates, Congress intended to clarify that courts
 4 should ‘apply the same liberal rules [to removal allegations as] to other matters of
 5 pleading. … The amount-in-controversy allegation of a plaintiff invoking federal-court
 6 jurisdiction is accepted if made in good faith.’” (citation omitted)).

7

8 “In measuring the amount in controversy, a court must assume that the
 9 allegations of the complaint are true and that a jury will return a verdict for the plaintiff
 10 on all claims made in the complaint. … The ultimate inquiry is what amount is put ‘in
 11 controversy’ by the plaintiff’s complaint, not what a defendant will actually owe.”
 12 *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (citing
 13 *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001
 14 (C.D. Cal. 2002), *Rippee v. Boston Market Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal.
 15 2005), and *Scherer v. Equitable Life Assurance Society of the United States*, 347 F. 3d
 16 394, 399 (2d Cir. 2003)). *See also Campbell v. Vitran Exp., Inc.*, 471 F. App’x 646,
 17 648 (9th Cir. 2012) (unpublished) (quoting *Kenneth Rothschild Trust v. Morgan Stanley*
 18 *Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002)); *Henry v. Cent. Freight*
 19 *Lines, Inc.*, 692 F. App’x 806, 807 (9th Cir. 2017) (unpublished).

20

21 To meet the amount in controversy threshold when a complaint fails to specify
 22 the amount of damages sought, a defendant need only show that “it is more likely than
 23 not that the amount in controversy satisfies the federal diversity jurisdictional amount
 24 requirement.” *Abrego Abrego v. The Dow Chem. Co.*, 443 F. 3d 676, 683 (9th Cir.
 25 2006) (quoting *Sanchez v. Monumental Life Ins. Co.*, 102 F. 3d 398, 404 (9th Cir.
 26 1996)) (quotations omitted). Here, Plaintiff seeks relief in the form of damages,
 27 attorney’s fees, injunctive relief, and more, but do not set forth a numerical sum of
 28 money sought.

1 In the Complaint, Plaintiff brings six causes of action. Plaintiff contends that the
 2 putative class is entitled to waiting time penalties under California Labor Code § 203.
 3 Defendant provides payroll services to five facilities in California. (Bland Decl. at ¶4.)
 4 While Defendant denies the factual allegations pertaining to Plaintiff's waiting time
 5 penalties claim, for purposes of this Notice of Removal, Defendant estimates that the
 6 average hourly rate for the putative class was approximately \$15.21 in 2017, and
 7 \$15.73 in 2018, and that the maximum statutory penalty of 30 days applies. (*Id.* at ¶¶
 8 5-6.) In 2017, approximately 673 employees separated from employment at these
 9 California facilities. (*Id.* at ¶ 5.) In 2018, approximately 853 employees separated
 10 from employment at these California facilities. (*Id.* at ¶ 6.) Assuming Plaintiff's
 11 allegations are true for purposes of removal, Defendant estimates the amount in
 12 controversy for this single claim is approximately \$5,676,965 (In 2017: \$15.21/hr * 8
 13 hours * 30 days * 673 employees = \$2,456,719; In 2018: \$15.73/hr * 8 hours * 30 days
 14 * 853 employees = \$3,220,246).

15
 16 Plaintiff also seeks penalties and damages for five additional causes of action,
 17 including but not limited to relief for inaccurate wage statements, unpaid wages, and
 18 unpaid overtime compensation. In addition, Plaintiff seeks to recover statutory
 19 attorneys' fees, which also must be included in calculating the amount in controversy.
 20 In the Ninth Circuit, "a court must include future attorneys' fees recoverable by statute
 21 or contract when assessing whether the amount-in-controversy requirement is met."
 22 *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F. 3d 785, 794 (9th Cir.
 23 2018). "Because the law entitles [plaintiff] to an award of attorneys' fees if he is
 24 successful, such future attorneys' fees are at stake in the litigation, and must be
 25 included in the amount in controversy." *Id.* See *Paul, Johnson, Alston & Hunt v.*
 26 *Graulty*, 886 F. 2d 268, 273 (9th Cir. 1989) (25% of the gross fund is a proper
 27 benchmark for awarding attorney's fees in class actions).
 28

1 Because the amount in controversy for just one of the six claims raised by
2 Plaintiff exceeds \$5,000,000, and any estimate of damages for Plaintiff's other five
3 claims and attorney's fees will further increase the estimated amount in controversy, the
4 amount in controversy in this Action meets the jurisdictional threshold under CAFA.

5

6 **C. THERE IS MINIMAL DIVERSITY**

7 When a class action is removed under CAFA, the district court can exercise
8 original jurisdiction over the action when "any member of a class of plaintiffs is a
9 citizen of a State different from any defendant[.]" 28 U.S.C. § 1332(5)(B).

10

11 Plaintiff Maria Rodas was an employee who worked at Defendant's LAV
12 Facility, and "is a resident of Los Angeles County in California." (Ex. A, Complaint at
13 ¶ 6.)

14

15 Defendant is a limited liability company organized in Delaware with its principal
16 place of business in Illinois. (Ex. A, Complaint at ¶ 7; Bland Decl. at ¶ 3.) Flying Food
17 Fare, Inc., an Illinois corporation with its principal place of business in Illinois, is the
18 sole member of Defendant Flying Food Group, LLC. (Bland Decl. at ¶ 2.) For
19 purposes of diversity jurisdiction, "an LLC is a citizen of every state of which its
20 owners/members are citizens." *Johnson v. Columbia Properties Anchorage, LP*, 437 F.
21 3d 894, 899 (9th Cir. 2006). The sole member of Flying Food Group, LLC is a citizen
22 of Illinois.

23

24 Because Plaintiff is a citizen of California, and Defendant's sole LLC member is
25 a citizen of Illinois, minimal diversity exists under CAFA.

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28

1 V. CONCLUSION

2 This Action involves an amount in controversy exceeding \$5,000,000, involves a
3 putative class consisting of more than 100 members, and is between citizens of different
4 states. Because Defendant timely filed this Notice of Removal and this putative class
5 action meets the jurisdictional prerequisites under CAFA, removal is proper.

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7 Dated: January 18, 2019

John A. Conkle
Amanda R. Washton
Desiree J. Ho, members of
CONKLE, KREMER & ENGEL
Professional Law Corporation

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By: /s/ John A. Conkle

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John A. Conkle

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Attorneys for Defendant Flying Food Group,
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